IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5104 OF 2013
(MAHALAXMI INVESTMENT & TRADING PVT.LTD...VS..MR. J.M.BARASOAIN & ORS.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. R.L.Khapre a/w Mr. R.G.Kavimandan and Mr B.B.Agrawal, Advocates for Petitioner.
Mr. C.S.Kaptan, Sr. Advocate a/b. Mr. Rohit Joshi and Mr. Amit Kukday, Advocate for Respondent Nos. 1 & 2.
Mr. S.V. Purohit, Advocate for Respondent No.3.

CORAM : Z.A.HAQ, J.
DATED : APRIL 18, 2015.

The petitioner has challenged the order passed by the learned District Judge directing the petitioner to continue the bank guarantee till the decision of the petition filed by the petitioner before the learned District Judge, under Section 9 of the Arbitration and Conciliation Act, 1996.

2. Today, Misc. Civil Application No. 1064 of 2012 has been disposed by this Court appointing Sole Arbitrator to decide the dispute raised by the petitioner in that Misc. Civil Application.

3. Similarly, Writ Petition No.3725 of 2013 has been disposed of by this Court referring the matter to the Sole Arbitrator by agreement of the contesting parties as per Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as “the Act of 2006”).

4. Mr.Khapre, the learned advocate for the petitioner has submitted that the petitioner was required to furnish the bank guarantee in view of the terms of the agreement dated 15h April, 2009. It is submitted that the bank guarantee was furnished some time in 2009 and subsequently the Facilitation Council under the provisions of the Act of 2006 has made an award on 18th February, 2013 concluding that the respondent No.2 is liable to pay the amount of more than Rs.Two Crores to the petitioner. However, the award passed by the Facilitation Council has been set aside and the matter is referred to the Sole Arbitrator as per Section 18(3) of the Act of 2006. The claim made by the respective parties will be adjudicated by the Sole Arbitrator.

In these facts, the submission is made on behalf of the petitioner that the requirement to continue the bank guarantee may not be persisted with and the petitioner is willing to furnish the solvent surety for the amount of Rs.90,00,000/- (Rs.Ninety Lakhs only) to the satisfaction of the Registrar of District Court, Akola within one month. The petitioner will file the undertaking before this Court within fifteen days stating that in case the petitioner is liable to pay the amount to the respondent No.2, the petitioner will pay the amount as per the decision of the Arbitrator, within three months from the date of the award.

5. Shri Joshi, the learned advocate for the respondent No.2 has submitted that though the disputes between the parties have been referred for arbitration, the petitioner is liable to continue the bank guarantee as per the terms of the agreement dated 15.04.2009. However, the

learned advocate for the respondent No.2 has not been able to *prima-facie* justify the contention regarding the continuation of the bank guarantee, in view of the subsequent events.

6. In view of the facts on the record, in my view the continuation of the bank guarantee is not necessary and the interest of justice would be sub-serve by the following order.

Hence, the following order :

i) The impugned order is set aside.

ii) The petitioner shall furnish solvent surety for the amount of Rs.90,00,000/- to the satisfaction of the Registrar of the District Court, Akola within one month.

iii) The petitioner shall file undertaking before this Court till 5th May, 2015 stating that the petitioner shall pay the amount if the arbitrator finds that the petitioner is liable to pay the amount to the respondent No.2, within three months from the date of the award. The petitioner shall also state in the undertaking that he will not dispose of the property of which the solvent surety is being furnished till the decision by the learned arbitrator and subject to fresh orders that may be passed by the learned Arbitrator in the matter.

iv) On filing of the undertaking and subject to furnishing of the solvent surety, the petitioner is discharged from the liability of continuing the bank guarantee.

The writ petition is allowed in the above terms. In the circumstances, the parties to bear their own costs.

In view of the disposal of this writ petition, the application filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 before the District Court does not survive, it is also disposed of accordingly.

JUDGE

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